No. 97-501

# In the Supreme Court of the United States

OCTOBER TERM, 1997

RANDALL RICCI, PETITIONER

*v.*

VILLAGE OF ARLINGTON HEIGHTS

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE SEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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## QUESTIONS PRESENTED

1. Whether the reasonableness clause of the Fourth Amendment prohibits warrantless arrests for misdemeanors that do not involve a breach of the peace.

2. Whether a municipality may, consistent with the Fourth Amendment, require its police officers to make full custodial arrests for an alleged violation of a license ordinance punishable only by fine in order to ensure compliance with the ordinance.

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## INTEREST OF THE UNITED STATES

This case presents two issues under the Fourth Amendment's reasonableness clause: whether police officers may make warrantless arrests for misdemeanors that do not involve breaches of the peace, and whether a police department may establish a policy requiring full custodial arrests for alleged violations of license ordinances punishable only by a fine. Federal law enforcement officers are authorized by statute to make warrantless arrests for misdemeanors committed in their presence, without any limitation to violations involving breaches of the peace or to violations punishable by more than a fine. See, *e.g.*, 18 U.S.C. 3052, 3053. In addition, the United States frequently prosecutes cases based on evidence that comes to

light as the result of arrests by state or local authorities enforcing their own laws, under their own policies. The United States therefore has a significant interest in the resolution of this case.

## STATEMENT

1. Illinois law authorizes municipalities, like respondent, to "pass all ordinances and make all rules and regulations proper or necessary to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper." 65 Ill. Comp. Stat. Ann. § 5/1-2-1 (West 1996). Municipalities may also declare violations of their ordinances to be misdemeanors punishable by up to six months in the penitentiary. *Id.* § 5/1-2-1.1. Failure to pay fines or penalties can also result in imprisonment of up to six months. *Id.* § 5/1-2-1. The municipality may prosecute violations of its penal ordinances as criminal offenses. *Id.* § 5/1-2-1.1. Illinois law further authorizes peace officers to arrest persons if the officers have "reasonable grounds to believe that the person is committing or has committed an offense." 725 Ill. Comp. Stat. Ann. § 5/107-2 (West 1992). The term "offense" includes violations of municipal ordinances. *People* v. *Edge*, 94 N.E.2d 359, 363 (Ill. 1950).

The Village of Arlington Heights generally requires businesses operating within its jurisdiction to be licensed. Village of Arlington Heights, Ill., Code of Ordinances (Ordn.) §§ 14-3001, 14-3002 (1994) (see J.A. 77-78). The Village declares it "unlawful for any person to conduct, engage in, maintain, operate, carry on or manage a business * * * without first having obtained a license for such business." Ordn. § 9-201. Violators are subject to a fine of up to $500 for each offense. *Ibid.* A separate offense occurs each day during which the business operates without a license. *Ibid.* The purpose of the license requirement is so the Village "can regulate the businesses for the safety and welfare of the community." J.A. 33.



2. Petitioner Randall Ricci owns and operates Rudeway Enterprises, a telemarketing business. Pet. App. 2, 12. Rudeway sells advertising and conducts fundraising for a labor union, the Combined Counties Police Associations. *Id.* at 2. After receiving complaints from citizens who were targets of Rudeway's solicitations, the Arlington Heights police department determined that petitioner was operating his telemarketing business without a license. *Ibid.*; see Ordn. §§ 9-201, 14-3001, 14-3002. The police also uncovered an outstanding arrest warrant for one of petitioner's employees. Pet. App. 2.

Detectives went to petitioner's place of business and arrested the employee pursuant to the warrant. Pet. App. 2. At that time, petitioner admitted to the detectives that he was operating without a business license. *Ibid.* Pursuant to police department policy, petitioner was placed under arrest and taken to the police station. *Ibid.* Petitioner was detained for approximately one hour while officers processed his arrest sheet, the Local Ordinance Complaint, and bond. *Id.* at 2-3. While petitioner was at the police station, his wife obtained the required business license for Rudeway. The charges against petitioner were later dismissed. *Id.* at 3.

3. Petitioner filed suit under 42 U.S.C. 1983 against the Village and the police officers who arrested him. J.A. 3-5. The complaint charged that the officers engaged in an unconstitutional search of the business premises, arrested petitioner without probable cause, and effected an unconstitutional seizure by arresting him for a fine-only offense. J.A. 4-5. Despite "the absence of a compensable injury," the district court denied summary judgment on petitioner's search claim because of a disputed question of fact. Pet. App. 14-15. The district court granted sum-

mary judgment for the police officers on the unlawful arrest claim. The court found that the officers had probable cause to arrest petitioner because "[t]he officers observed Mr. Ricci committing th[e] unlawful act" of "operating Rudeway Enterprises without a business license." *Id.* at 16. Finally, the district court rejected petitioner's contention that the Village policy requiring arrests for violations of the business licensing ordinance violates the Fourth Amendment, holding that the arrest was "reasonable" because the crime had been committed in the officers' presence. *Id.* at 18.[1]

4. The court of appeals affirmed. The court held that the arrest was permissible because the officers had probable cause and the authority to arrest under state law. Pet. App. 4. The court of appeals indicated that, because the arrest was supported by probable cause, this is "not one of those extraordinary cases that require us to conduct a balancing analysis." *Id.* at 8. The court of appeals nonetheless noted that the arrest would satisfy a balancing of the relevant factors because of (i) the prolonged duration of petitioner's violation of the ordinance, which subjected him to "a potential fine of tens of thousands of dollars," and (ii) the brief (one hour) period of detention by the police. *Id.* at 7. "Further," the court of appeals concluded, "a neutral magistrate following Illinois law would surely have issued a warrant in this case." *Id.* at 8 n.1.[2]

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[1] Petitioner did not appeal the dismissal of his unlawful arrest claim, and the parties subsequently settled the search claim. Pet. App. 3. Neither of those issues was presented in the petition for certiorari.

[2] The court of appeals also rejected petitioner's effort to invoke the Warrant Clause of the Fourth Amendment. The court noted that petitioner had waived that claim, and that petitioner "conceded at oral argument that, had a warrant been issued in this case, the arrest would have been reasonable under the Fourth Amendment." Pet. App. 8 & n.1; see also *id.* at 18 n.4.



## SUMMARY OF ARGUMENT

Petitioner's arrest for his violation of municipal law satisfied the requirements of the Fourth Amendment. The arrest was supported by probable cause to believe that petitioner violated the local law; indeed, he admitted his violation at the time of arrest. Because probable cause existed and the seizure was not effected in an extraordinary or unusual manner, the arrest was reasonable within the meaning of the Fourth Amendment.

1. There is no basis for concluding that the Fourth Amendment permits a warrantless arrest for a misdemeanor only if the violation involves a breach of the peace. The common law expressly recognized that the arrest authority of police could be expanded by statute to include arrests like the one at issue in this case, and the longstanding practice of the federal government and every State confirms that understanding. Moreover, the phrase "breach of the peace" itself lacked an established meaning at common law, such that, even if it were incorporated into the Fourth Amendment, it would not restrict arrests in the manner advocated by petitioner. Indeed, this Court has recognized that the congressional immunity from arrest for a "breach of the peace" found in Article I, Section 6 of the Constitution embraces all violations of the criminal law. Finally, the reasonableness of an arrest under the Fourth Amendment should not turn on malleable and diverse legislative classifications of crimes as misdemeanors or felonies, or on variable judicial definitions of "breach of the peace."

2. The fact that the ordinance at issue is punishable only by a fine does not mean that the Fourth Amendment bars a custodial arrest. The common law did not foreclose

arrests for fines, and established practice permits them. Furthermore, the propriety of an officer's decision to arrest based on probable cause—and his potential liability for money damages—should not vary based on the punishment that ultimately ensues weeks, months, or years later. And there is no basis for concluding that a jurisdiction's decision to penalize a violation by a fine (rather than imprisonment) means that it is less worthy of effective enforcement measures. Where probable cause exists, a jurisdiction's decision to enforce criminal violations through a custodial arrest is not constitutionally suspect simply because a less intrusive enforcement method may arguably be available.

## ARGUMENT

### I. WARRANTLESS MISDEMEANOR ARRESTS BASED ON PROBABLE CAUSE ARE REASONABLE UNDER THE FOURTH AMENDMENT REGARDLESS OF WHETHER THE OFFENSE CONSTITUTES A "BREACH OF THE PEACE"

The Fourth Amendment, made applicable to the States through the Fourteenth Amendment, *Payton* v. *New York*, 445 U.S. 573, 576 (1980), provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV. Outside the home, the Fourth Amendment does not require a warrant in order to justify an arrest based on probable cause. *Payton*, 445 U.S. at 590-591; *Gerstein* v. *Pugh*, 420 U.S. 103, 113 (1975). Rather, a police officer's "on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." *Gerstein*, 420 U.S. at 113-114. There is no exception to that rule for misdemeanors not involving a breach of peace.



#### A. No Source Of Law Supports Imposing On The Fourth Amendment A "Breach Of The Peace" Requirement For Misdemeanor Arrests

The common law rule for warrantless misdemeanor arrests "[was] sometimes expressed" as limited to "when a breach of the peace has been committed in [the officer's] presence or when there is reasonable ground for supposing that a breach of the peace is about to be committed or renewed in his presence." *Carroll* v. *United States*, 267 U.S. 132, 157 (1925) (quoting 9 *Halsbury's Laws of England* (*Halsbury*) pt. III, § 612, at 299 (1st ed. 1909)). But that statement of the common law does not suggest that a parallel rule should exist under the Fourth Amendment. The common law itself, this Court's cases, and a pattern of arrest authorization statutes make clear that Congress and the States may expand upon the common law arrest authority of law enforcement officers.

1. The common law specifically recognized that an officer's arrest authority could be expanded by statute. 9 *Halsbury* § 613, at 300-301 & nn. d, e, 303 n.f; 10 *Halsbury's Laws of England* § 632, at 342 (3d ed. 1955) ("An arrest without a warrant may be under a power conferred by common law or by statute."). Thus, under Section 18 of the Pedlar's Act, a police officer could arrest a pedlar who "refuses to show his certificate or has no certificate." 9 *Halsbury*, at § 613, at 302 n.e. Similarly, under Section 6

of the Hawkers Act, an "officer of the peace [could] arrest a person found committing an offence against that section (hawking without licence etc.)." 9 *Halsbury*, at § 613, at 302 n.e.

Accordingly, "it is generally recognized today that the common law authority to arrest without a warrant in misdemeanor cases may be enlarged by statute." *Welsh* v. *Wisconsin*, 466 U.S. 740, 756 (1984) (White, J., dissenting) (internal quotation marks omitted); H. Wilgus, *Arrest Without A Warrant*, 22 Mich. L. Rev. 541, 550 (1923-1924) ("The states may, by statute, enlarge the common law right to arrest without a warrant, and have quite generally done so or authorized municipalities to do so, as for example, an officer may be authorized by statute or ordinance to arrest without a warrant for various misdemeanors and violations of ordinances, other than breaches of the peace, if committed in his presence.") (citing cases), 705-706 (footnotes omitted).[3]

2. This Court's descriptions of the common law rule for misdemeanor arrests, moreover, have generally omitted the breach of the peace limitation and have focused, instead, on the requirement that the misdemeanor be committed in the officer's presence. See, *e.g.*, *Payton*, 445 U.S. at 590 n.30 ("The cases construing the Fourth Amendment thus reflect the ancient common-law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence."); *United States* v. *Watson*, 423 U.S. 411, 418 (1976) (same); *Johnson* v. *United States*, 333 U.S. 10, 15 (1948); *Carroll*,

[3] See also *Oleson* v. *Pincock*, 251 P. 23, 25 (Utah 1926); *Burroughs* v. *Eastman*, 59 N.W. 817, 819-820 (Mich. 1894); *White* v. *Kent*, 11 Ohio St. 550, 554 (1860); *Conrad* v. *Lengel*, 144 N.E. 278, 278 (Ohio 1924) (peddling without city license); 10 *Halsbury*, §§ 641, 642, at 347-351 (discussing statutory powers of police to arrest without a warrant).



267 U.S. at 156 ("The usual rule is that a police officer * * * may only arrest without a warrant one guilty of a misdemeanor if committed in his presence."); *John Bad Elk* v. *United States*, 177 U.S. 529, 534 (1900) ("[A]n officer, at common law, was not authorized to make an arrest without a warrant, for a mere misdemeanor not committed in his presence."); *Kurtz* v. *Moffitt*, 115 U.S. 487, 498-499 (1885); *Davis* v. *United States*, 328 U.S. 582, 614 (1946) (Frankfurter, J., dissenting).[4]

The common law "breach of the peace" limitation that petitioner seeks to incorporate into the Fourth Amendment thus has not been treated as an essential aspect of the common law arrest power. See also 4 W. Blackstone, *Commentaries on the Laws of England* 289 (1769). Likewise, most lower courts that have addressed the issue have held that the Fourth Amendment does not bar warrantless misdemeanor arrests, regardless of whether the offense constitutes a breach of the peace or is punishable only by fine. See *Higbee* v. *City of San Diego*, 911 F.2d 377, 379-380 (9th Cir. 1990); *United States* v. *Trigg*, 878 F.2d 1037, 1041 (7th Cir. 1989); *Fisher* v. *Washington Metro. Area Transit Auth.*, 690 F.2d 1133, 1139 & n.6 (4th Cir. 1982); *Street* v. *Surdyka*, 492 F.2d 368, 370-373 (4th Cir. 1974).[5]

3. The breach of the peace limitation on misdemeanor arrests also finds no support in the legislation of Congress

[4] The requirement that the misdemeanor be committed in the officer's presence is not at issue in this case. Cf. *Welsh*, 466 U.S. at 756 (White, J., dissenting) ("But the requirement that a misdemeanor must have occurred in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment."); 3 W. LaFave, *Search and Seizure* § 5.1(b), at 21 (3d ed. 1996).

[5] But see *Staker* v. *United States*, 5 F.2d 312, 314 (6th Cir. 1925); *Barnett* v. *United States*, 525 A.2d 197, 199-200 (D.C. App. 1987) (civil violation); *Thomas* v. *State*, 614 So.2d 468, 470-471 (Fla. 1993) (civil violation).

or the States. While Congress has generally retained the "in the presence" requirement for misdemeanor arrests by federal law enforcement officers, no federal statute confines misdemeanor arrests to breaches of the peace. See, *e.g.*, 18 U.S.C. 3052 (FBI agents authorized to "make arrests without warrant for any offense against the United States committed in their presence"), 3053 (same, for U.S. marshals and deputies), 3056(c)(1)(C) (same, for Secret Service).[6] "Because there is a strong presumption of constitutionality due to an Act of Congress, especially when it turns on what is 'reasonable,'" *Watson*, 423 U.S. at 416 (quotation marks omitted), Congress's consistent omission of a breach of the peace requirement for warrantless misdemeanor arrests counsels strongly against

[6] See also 18 U.S.C. 3061(a)(2) (postal inspectors may "make arrests without warrant for offenses against the United States committed in their presence"), 3063(a)(3) (same for Environmental Protection Agency officers); 19 U.S.C. 1589a(3) (same for customs officers); 21 U.S.C. 878(a)(3) (same for Drug Enforcement Administration officers); 25 U.S.C. 2803(3)(A) (Bureau of Indian Affairs officers may "make an arrest without a warrant for an offense committed in Indian country if * * * the offense is committed in the presence of the employee"); 28 U.S.C. 566(d) (in protecting courts and federal judicial officers, U.S. marshals may "make arrests without warrant for any offense against the United States committed in his or her presence"); see generally U.S. General Accounting Office, *Federal Law Enforcement: Investigative Authority and Personnel at 32 Organizations* App. II & III (GAO/GGD-97-93, Sept. 1996); U.S. General Accounting Office, *Federal Law Enforcement: Investigative Authority and Personnel at 13 Agencies* App. I & II (GAO/GGD-96-154, Sept. 1996). Congress has also authorized certain law enforcement officers to effect warrantless arrests for specific offenses, some of which are not felonies. See, *e.g.*, 16 U.S.C. 668b(a), 668dd(f), 670j(b)(1), 690e(a), 706, 727(a), 742j-1(d), 831c-3(b), 916g, 959(d)(1), 971f(a)(2), 972g(d), 1172, 1338(b), 1377(d)(1), 1540(e)(3), 3375(b), 5506(c)(1)(A); 21 U.S.C. 372; 22 U.S.C. 1978(f)(4)(A); 33 U.S.C. 446, 452, 1321(m)(1)(B); 45 U.S.C. 413; 50 U.S.C. App. 2411(a).



incorporating such a limitation into the Fourth Amendment.

All fifty States and the District of Columbia, likewise, authorize at least some (if not all) of their law enforcement officers to execute warrantless misdemeanor arrests in the absence of a breach of the peace. See, *e.g.*, Ala. Code § 15-10-3(a)(1) (1996) (authorizing warrantless arrests for any "public offense" committed in the presence of the officer); Alaska Stat. § 12.25.030(a)(1) (Michie 1996) (authorizing arrest without a warrant "for a crime committed * * * in the presence of the person making the arrest"); Ariz. Rev. Stat. Ann. § 13-3883 (West 1997) (authorizing arrest without a warrant when a misdemeanor has been committed in the officer's presence).[7]

The Model Code of Prearraignment Procedure similarly authorizes warrantless arrests where the officer has reasonable cause to believe that the person has committed "a misdemeanor or petty misdemeanor in the officer's presence." *Model Code of Prearraignment Procedure* § 120.1, at 13 (1975). Academic scholars have also long acknowledged the propriety in this country of warrantless arrests for misdemeanors even if they do not amount to a breach of the peace.[8]

[7] We have collected representative state statutes in an appendix to this brief. App., *infra*, 1a-5a. See also W. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 Mo. L. Rev. 771, 847 (1993).

[8] See, *e.g.*, H. Voorhees, *The Law of Arrest in Civil and Criminal Actions* § 131, at 78-79 (1904) ("[B]y authority of statute, city charter, or ordinance, [an officer] may arrest without a warrant, one who, within his jurisdiction, commits a misdemeanor other than a breach of the peace, as, for example, one who is violating a city ordinance, without breaking the peace.") (footnotes omitted), § 146, at 85; Wilgus, *supra*, at 541, 550; 3 W. LaFave, *supra*, § 5.1(b), at 13-22.

4. In some contexts, common law limitations that take root in this country may suggest that a similar constraint applies under the Fourth Amendment. See *Wilson* v. *Arkansas*, 514 U.S. 927, 933 (1995) (common law "knock and announce" principle incorporated into Fourth Amendment in part because the rule "was woven quickly into the fabric of early American law"). But this Court "has not simply frozen into constitutional law those law enforcement practices that existed at the time of the Fourth Amendment's passage." *Tennessee* v. *Garner*, 471 U.S. 1, 13 (1985) (quoting *Payton*, 445 U.S. at 591 n.33). This is especially true when the Court is analyzing the appropriate objects or targets of a search or seizure, rather than defining what constitutes a "search" or "seizure" in the first instance. See *California* v. *Hodari D.*, 499 U.S. 621, 627 n.3 (1991); see also *Payton*, 445 U.S. at 600 (noting that "custom and contemporary norms necessarily play * * * a large role in the constitutional analysis" of what is "reasonable" under the Fourth Amendment); *Warden* v. *Hayden*, 387 U.S. 294, 300-310 (1967) (rejecting common-law prohibition against searches for "mere evidence").

In this context, where the common law itself acknowledged that legislatures were not bound by a breach-of-the-peace limitation, and where "the judgment of the Nation and Congress has for so long been to authorize warrantless public arrests on probable cause" for misdemeanors, *Watson*, 423 U.S. at 423, transposition of a breach of the peace limitation into the Fourth Amendment is unwarranted.

### B. "Breach of the Peace" At Common Law Often Encompassed All Violations Of The Criminal Law

"Breach of the peace" had different meanings at common law. In the face of the range of meanings employed, petitioner's suggestion that a restrictive definition apply



as a matter of constitutional law is particularly unjustified.

While some definitions focused (like petitioner) on conduct that threatened violence, disorder, or disruption, the common law at other times employed "breach of the peace" to refer to all violations of the criminal law. See, *e.g.*, H. Voorhees, *The Law of Arrest in Civil and Criminal Actions* § 117, at 72 (1904) ("a breach of the public peace is the invasion of the security and protection which the law affords every citizen"); Wilgus, *supra*, at 574 (under the statute of Charles II, "it was held that every indictable offense was constructively a breach of the peace * * * [and] disobeying any act of parliament was a breach of the peace") (footnotes omitted); *City of Boerne* v. *Flores*, 117 S. Ct. 2157, 2173 (1997) (Scalia, J., concurring) (citing English cases to the effect that "[E]very breach of law is against the peace."), 2174 & n.2.[9]

Indeed, this Court has adopted the broader construction of "breach of the peace" in interpreting the legislative immunity from arrest granted Members of Congress by Article I, Section 6 of the Constitution, which in relevant part provides: "The Senators and Representatives * * * shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Atten-

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[9] See also *Akron* v. *Mingo*, 160 N.E.2d 225, 228-231 (Ohio 1959); *State ex rel. Thompson* v. *Reichman*, 188 S.W. 225, 228 ("The term 'breach of the peace' is generic and includes all violations of public peace or order, or acts tending to the disturbance thereof."), 230, on reh'g, 188 S.W. 597, 601 (Tenn. 1916) ("[W]hat can be more logical than to say that every violation of a criminal law is a breach of the peace of the state?"). The common law also recognized that the crimes constituting a breach of the peace could be expanded by statute. Wilgus, *supra*, at 575 (noting that the phrase had been expanded to include, for example, desecrating the national flag and transporting intoxicating liquor); *Reichman*, 188 S.W. at 607.

dance at the Session of their respective Houses, and in going to and returning from the same." As this Court has explained:

> [W]hen the Constitution was written the term "breach of the peace" did not mean, as it came to mean later, a misdemeanor such as disorderly conduct but had a different 18th century usage, since it derived from breaching the King's peace and thus embraced the whole range of crimes at common law.

*United States* v. *Brewster*, 408 U.S. 501, 521 (1972); see also *Williamson* v. *United States*, 207 U.S. 425, 444 (1908) ("Now, as all crimes are offenses against the peace, the phrase 'breach of the peace' would seem to extend to all indictable offenses, as well those which are in fact attended with force and violence, as those which are only constructive breaches of the peace of the government, inasmuch as they violate its good order."); J. Story, *Commentaries on the Constitution of the United States* § 438, at 308 (Carolina Academic Press 1987) (same).

Petitioner's argument thus attempts to imply into one provision of the Constitution an interpretation of "breach of the peace" that is quite different from the meaning the Framers ascribed to that phrase when drafting Article I. At a minimum, the established constitutional definition and other common law authority demonstrate that the meaning of "breach of the peace" was sufficiently unsettled to preclude elevating petitioner's reading of the phrase to the level of constitutional rule. See *Payton*, 445 U.S. at 598.



### C. Assessing The Validity Of Warrantless Arrests Based On The Common Law Distinction Between Felonies And Misdemeanors Would Be Unworkable

Petitioner's effort to impose constitutional limits on misdemeanor arrests is predicated upon an anachronistic distinction between felonies and misdemeanors that cannot be translated into modern criminal law. At common law, felonies consisted of crimes punishable by death or forfeiture of land. See 1 J. Stephen, *A History of the Criminal Law of England* 458 (1883).[10] The term "misdemeanor" comprised all remaining crimes except treason. *E.g.*, Wilgus, *supra*, at 572.

Because of the statutory codification of criminal law in most American jurisdictions, many of the crimes considered to be misdemeanors at common law—such as assault, attempted felonies, forgery, and kidnapping—are now considered felonies. See, *e.g.*, *Garner*, 471 U.S. at 14, 20 (statutory changes in the classification of crime have "made the assumption that a 'felon' is more dangerous than a misdemeanant untenable"; distinction is "highly technical" and "arbitrary").[11] Indeed, "[i]n this country there is no generally accepted meaning of the[] terms" felony and misdemeanor "except as given by statute."

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[10] See also *Garner*, 471 U.S. at 13-14; *Kurtz*, 115 U.S. at 499; Voorhees, *supra*, § 115, at 70-71; Wilgus, *supra*, at 569.

[11] See also Wilgus, *supra*, at 573; 1 Stephen, *supra*, at 489 ("A large number of misdemeanours were created by statute at different times, but especially in the eighteenth and nineteenth centuries, which differ in no essential respect from the common crimes distinguished as felonies."); 2 Stephen, *supra*, at 189, 193 ("[S]ince the substitution of milder punishments for death, the distinction [between felonies and misdemeanors] has become unmeaning and a source of confusion, especially as many offences have been made misdemeanours by statutes, which render the offender liable to punishments as severe as those which are now usually inflicted upon persons convicted of felony.").

Wilgus, *supra*, at 570; *Carroll*, 267 U.S. at 158 ("Under our present federal statutes, [the distinction between felonies and misdemeanors] is much less important and Congress may exercise a relatively wide discretion in classing particular offenses as felonies or misdemeanors.").

Petitioner's proposed constitutional rule, if construed literally, would thus place undue weight on the vagaries of legislative classifications of crime. As a result, the same crime committed by the same defendant would constitutionally be subject to warrantless arrest in one jurisdiction and to only a summons or citation in another jurisdiction. For example, stalking by telephone or letter, or violation of a protective order in a domestic violence case (neither of which would necessarily have been considered a breach of the public peace at common law) is treated as a felony in some States and a misdemeanor in others. See U.S. Dep't of Justice, Office of Justice Programs, *Domestic Violence and Stalking: The Second Annual Report to Congress under the Violence Against Women Act* App. A (July 1997) (chronicling state legislation).[12] And the State of New Jersey classifies all of its

[12] See also U.S. Dep't of Justice, Bureau of Justice Assistance, *Regional Seminar Series on Developing and Implementing Antistalking Codes* 53-55 (Table 9) (June 1996); Institute for Law and Justice, *Domestic Violence: A Review of State Legislation Defining Police and Prosecution Duties and Powers* (*Domestic Violence*) 2, 7-10, 25 (March 1998); Institute for Law and Justice, *State Stalking Legislation: A Status Report—1997* (*State Stalking Legislation*), at 5 (Exh.1) and App. 1 & 2 (Mar. 1998).

At least 28 States and the District of Columbia, moreover, mandate or strongly encourage arrests in stalking and domestic violence cases as a matter of policy. Petitioner's proposed construction of the Fourth Amendment could imperil some of those important law enforcement policies and programs. *State Stalking Legislation*, *supra*, at 19 (Exh. 4) (documenting States that authorize arrests without a warrant for stalking); *Domestic Violence*, *supra*, at 12 ("Today all but 1 state authorizes warrantless arrests of domestic violence offenders based solely on a probable cause determination," and "[i]n 20 states and the District of Columbia police arrest is required when the officer determines that probable cause exists."), 13, 76 (48 states authorize warrantless arrests based on a probable cause determination that a protective order has been violated). The laws of thirteen States explicitly bar police from simply issuing citations or appearance tickets in lieu of a formal arrest in domestic violence cases. *Domestic Violence*, *supra*, at 16.



crimes as misdemeanors. N.J. Stat. Ann. § 2C:1-4 (West 1995). This Court should be hesitant to constitutionalize legislative labels that are often the "result[] of evolution or accident" (Wilgus, *supra*, at 568), and to adopt a rule under which "the search and seizure protections of the Fourth Amendment are so variable" (*Whren* v. *United States*, 116 S. Ct. 1769, 1775 (1996)).[13]

The misdemeanor/felony distinction between probable cause arrests would also prove difficult to apply by police officers on the street. Frequently the line between felony and misdemeanor conduct is dependent upon the offender's prior criminal history or the amount of money or of a drug at issue. See, *e.g.*, 18 U.S.C. 510 (forgery of Treasury checks under $500 is a misdemeanor); 21 U.S.C. 841, 842, 844. A police officer who witnesses the forgery of a Social Security check or an individual possessing an unknown quantity of drugs (neither of which would necessarily qualify as a breach of peace at the common law) will not know whether a warrantless arrest is permitted until after the offender is seized, the evidence collected, and

[13] These concerns equally counsel against amici ACLU's and NACDL's argument (ACLU Br. 22-28; NACDL Br. 15-17) that warrants should be required for misdemeanor arrests. The need to preempt harm to victims, prevent offenders from disappearing, confirm an offender's identity, and protect against the destruction of evidence justifies permitting arrests outside the home based on probable cause alone, regardless of whether an offense can be deemed a breach of the peace or not.

the defendant's criminal history checked. See *Berkemer* v. *McCarty*, 468 U.S. 420, 430 (1984) ("The police often are unaware when they arrest a person whether he may have committed a misdemeanor or a felony. * * * Indeed, the nature of his offense may depend upon circumstances unknowable to the police, such as whether the suspect has previously committed a similar offense or has a criminal record of some other kind.") (footnote omitted).[14]

Petitioner and his amici suggest (Pet. Br. 21-26; ACLU Br. 4, 10, 19-22; NACDL Br. 9-15) that misdemeanors that do not amount to a breach of the peace are less serious crimes for which enforcement can be relaxed at little social cost. That assessment is unfounded. The forgery of a poor, elderly person's $400 Social Security check (18 U.S.C. 495, 510) may distress and financially embarrass that victim. An officer's arrest of an individual who mutilates federal bank notes by removing the corner dollar values (18 U.S.C. 333) may expose a counterfeiting operation that would cost the taxpayers a significant amount of money. And domestic violence that does not rise to the level of a common law breach of the peace (such as where the victim of a battery cannot scream or otherwise disturb the public, see Wilgus, *supra*, § 121, at 74) may nevertheless inflict considerable suffering on the victim.

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[14] It would be possible to hold that a warrantless arrest would be permissible only if officers had knowledge of the facts that raised the misdemeanor to a felony. See *Welsh*, 466 U.S. at 746 n.6. But that approach would sacrifice the strong societal interest in law enforcement for misdemeanors that pose significant social harms in their own right and that may frequently constitute felonies because of aggravating factors that are discovered only after the arrest.



## II. THE FOURTH AMENDMENT PERMITS ARRESTS BASED ON PROBABLE CAUSE FOR OFFENSES NOT PUNISHABLE BY INCARCERATION

Petitioner's alternative contention (Br. 11-13, 23 26) is that, even when the police possess probable cause, they may not effectuate an arrest if the authorized punishment for the violation is a fine. The fact that an offense is not punishable by incarceration, however, does not strip the offense of its criminal character. Nor does it diminish the governmental interest in ensuring compliance with the law and the imposition of authorized penalties.[15]

### A. Fines Are A Historic Means Of Enforcing The Criminal Law

Fines have long been a recognized means of enforcing the criminal law. In 1413, persons found guilty of forging property deeds were required to "make fine and ransom at the king's pleasure." 3 Stephen, *supra*, at 181.[16] Offenses

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[15] Amici National Association of Criminal Defense Lawyers and the American Civil Liberties Union attempt to characterize the ordinance violation at issue as a civil, rather than a criminal, offense. NACDL Br. 6; ACLU Br. 1 n.2. We take no position on that issue. We note, however, that petitioner has not contested the status of the Village's business ordinance as a misdemeanor either before this Court or the court of appeals. Neither the district court nor the court of appeals addressed the status of the offense. Respondent's first question presented, moreover, presupposes that the offense is a misdemeanor. Pet. i ("Does the reasonableness clause of the Fourth Amendment incorporate the common law rule prohibiting warrantless arrests *in misdemeanor cases* that do not involve a breach of the peace?") (emphasis added).

[16] Petitioner's effort (Br. 11) to categorize ordinance offenses as civil is particularly unhelpful in this analysis both because of how closely civil and criminal cases were intertwined in the early common law and because the common law allowed for arrests to commence civil

as varied as "cutting off the ears of the king's subjects," burning carts loaded with coal, bribery in parliamentary elections, and the unlawful collection of interest were, for a period of time, punishable only by a fine. *Id.* at 189, 198, 253. Cases specifically recognized that "ordinances punishing by fine" certain types of misconduct "were *penal* laws." Wilgus, *supra*, at 551 n.60 ("[A]lthough the penalty may be a fine only * * *, there is a real crime.") (citing *County of Wayne* v. *City of Detroit*, 17 Mich. 390 (1868), and *People* v. *Controller*, 18 Mich. 445, 576 (1869)).

In the modern day, government continues to rely upon fines as an important means of punishing crime. Congress has created a number of criminal offenses for which a fine is the only authorized sanction. See, *e.g.*, 14 U.S.C. 84 (interference with aids to navigation), 15 U.S.C. 1338 (cigarette labeling and advertising); 16 U.S.C. 422d and 423f (vandalism at national monuments and military parks); 18 U.S.C. 243 (exclusion of jurors on account of race or color), 244 (discrimination against person wearing uniform of the armed forces); 18 U.S.C. 475 and 489 (imitating or reproducing U.S. obligations, securities, or coins).

Petitioner and his amici assume (Pet. Br. 7-9; ACLU Br. 19-22; NACDL Br. 9-11) that the decision to withhold incarceration as punishment for a crime diminishes the seriousness of the offense. While the type of sanction authorized is one indication of seriousness, *Welsh*, 466 U.S. at 754 n.14; see *Lewis* v. *United States*, 116 S. Ct. 2163, 2166 (1996), the sanction chosen by government can-

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actions. See, *e.g.*, 3 Stephen, *supra*, at 180-181, 241-242 ("[T]he blending of civil and criminal consequences in a single proceeding * * * was not an uncommon characteristic of our early criminal law."); *Long* v. *Ansell*, 293 U.S. 76, 83 (1934) ("When the Constitution was adopted, arrests in civil suits were still common in America."); *Williamson*, 207 U.S. at 435-440.



not be the sole, dispositive factor in evaluating the public's interest in enforcement. The selection of a punishment for a crime reflects a complicated judgment about the nature of the crime, its cost to society, the risk of recidivism, and the best means of deterring violations. See *Welsh*, 466 U.S. at 760 (White, J., dissenting). For example, many prosecutor's offices have adopted diversion programs for first-time domestic violence and drug offenders. First-time offenders are given probation and required to meet a variety of educational, employment, and counseling requirements, in lieu of incarceration. See also *Bearden* v. *Georgia*, 461 U.S. 660, 662 (1983) (discussing the Georgia First Offender's Act). It is true that incarceration remains a potential penalty in the diversion program cases. But that does not significantly distinguish the case at hand, because individuals who refuse to pay the fine for an ordinance violation (for reasons other than poverty) often can be jailed. See, *e.g.*, 65 Ill. Comp. Stat. Ann. 5/1-2-1 (West 1996); *Bearden*, 461 U.S. at 668; *Tate* v. *Short*, 401 U.S. 395, 400 (1971) ("[O]ur holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so * * * [or] when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means.").

A decision to limit the sanction for a violation to a fine thus does not translate into a lack of interest in or commitment to enforcing the law. Legislatures may "consciously chose to limit the penalties imposed on first offenders in order to increase the ease of conviction and the overall deterrent effect of the enforcement effort." *Welsh*, 466 U.S. at 763 (White, J., dissenting). Indeed, given the exploding prison population and the generally

high recidivism rates for released prisoners,[17] governments that experiment with alternatives to incarceration, such as fines, should not find their hands tied in enforcing and implementing those alternative sanctions. Nor should the Fourth Amendment categorically declare that such experimentation, as a matter of constitutional law, reflects such a diminished community interest in law enforcement that probable cause arrests are impermissible. See *Mayer* v. *City of Chicago*, 404 U.S. 189, 197 (1971) ("The practical effects of conviction of even petty offenses of the kind involved here are not to be minimized. A fine may bear as heavily on an indigent accused as forced confinement."); *Tate*, 401 U.S. at 399 (acknowledging government's "concededly valid interest in enforcing payment of fines").

### B. The Fourth Amendment Permits Seizures For Offenses Punishable Only By Fine

This Court's decisions have recognized that the Fourth Amendment does not preclude seizures where the offense is not punishable by incarceration. Stops for traffic violations have long been permitted. See, *e.g.*, *Pennsylvania* v. *Mimms*, 434 U.S. 106, 107 (1977) (driving with expired license plate).[18] Recently, in *Whren* v. *United States*, 116 S. Ct. 1769 (1996), this Court unanimously rejected an effort to require more than probable cause to justify a seizure for a "civil traffic violation." *Id.* at 1771-1773. The petitioners in *Whren* argued that, in analyzing

[17] See U.S. Dep't of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States 1995* 6 (Table 1.5), 37 (Table 3.6), 130 (Table 6.5) (May 1997); U.S. Dep't of Justice, Office of Justice Programs, *Recidivism of Prisoners Released in 1983* 1-3 (Apr. 1989).

[18] See also *Michigan* v. *DeFillippo*, 443 U.S. 31, 36-40 (1979); *Gustafson* v. *Florida*, 414 U.S. 260, 265 (1973); *United States* v. *Robinson*, 414 U.S. 218, 234-235 (1973).



the reasonableness of the seizure, courts should factor in the purportedly diminished governmental interest in enforcing "minor traffic infractions." *Id.* at 1776. While acknowledging "in principle" that every Fourth Amendment case entails a balancing of relevant factors, the Court held that "the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Ibid.* The officer's "probable cause to believe the law has been broken" necessarily "'outbalances' private interest in avoiding police contact." *Id.* at 1777. The Court ruled that actual balancing is reserved for those cases where probable cause is absent or the seizure is "conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests." *Id.* at 1776.[19]

To the *Whren* petitioners' objections that traffic violations are so multitudinous and inadvertently violated as to render the stops "extraordinary," the Court responded:

> [W]e are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly violated that infraction itself can no longer be the ordinary measure of the lawfulness of enforcement. And even if we could identify such exorbitant codes, we do not know by what standard (or what right) we would decide, as petitioners would have us do, which particular provisions are sufficiently important to merit enforcement.

116 S. Ct. at 1777. Here, as in *Whren*, "there is no realistic alternative to the traditional common-law rule that

[19] Such extraordinary searches or seizures include surgical intrusion (*Winston* v. *Lee*, 470 U.S. 753 (1985)), the use of deadly force (*Garner*, 471 U.S. 1), or warrantless or unannounced entries into the home (*Wilson*, 514 U.S. 927; *Welsh*, 466 U.S. at 740). Neither those activities, nor anything like them, occurred here.

probable cause justifies a search and seizure," and so "infraction itself" should remain "the ordinary measure of the lawfulness of enforcement." *Whren*, 116 S. Ct. at 1777.

The present case involves a short custodial arrest, and *Whren* involved a stop. But both qualify as seizures under the Fourth Amendment. 116 S. Ct. at 1772; *Watson*, 423 U.S. at 414-424; see also *Robbins* v. *California*, 453 U.S. 420, 450 (1981) (Stevens, J., dissenting) ("I am not familiar with any difference between custodial arrests and any other kind of arrest."), overruled, *United States* v. *Ross*, 456 U.S. 798 (1982). Furthermore, the extent of the seizure was not a factor in the *Whren* Court's analysis precisely because such balancing was deemed unnecessary for routine seizures based on probable cause. See 116 S. Ct. at 1776-1777; see also *Robbins*, 453 U.S. at 450 (Stevens, J., dissenting) ("As a matter of constitutional law, however, any person lawfully arrested for the pettiest misdemeanor may be temporarily placed in custody.") (footnote omitted). In *Welsh*, the Court held that a State's classification of an offense as noncriminal and the modest sanction imposed were relevant in assessing whether officers could make a warrantless arrest in the home. 466 U.S. at 752-754. *Whren* makes clear that, for routine seizures based on probable cause outside the home, such considerations play no part in the constitutional analysis. See also *Schmerber* v. *California*, 384 U.S. 757, 766-772 (1966).

A custodial arrest may serve valid purposes even where the ultimate penalty upon conviction is not incarceration. The police may need to preserve evidence, confirm the suspect's identity, defuse and control a situation, or abate a continuing violation. Other purposes may exist as well.[20]

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[20] For example, jurisdictions that mandate or encourage arrests of shoplifters or runaways may consider their arrest policy part of a larger law enforcement strategy designed to deter or cure petty violations before a pattern of criminality develops.



J.A. 74 (Arlington Heights effects arrests for violations of its business license ordinance because "there [are] accountability factors to make sure that people are going to come into court"). Those purposes justify the arrest even where the legislature does not deem it necessary to punish violators with incarceration.[21]

### C. A Distinction In Arrest Authority Based On Punishment Poses Enforcement Difficulties

Like petitioner's effort to confine misdemeanor arrests to breaches of the peace, a constitutional rule that only allows arrests for offenses punishable by imprisonment raises problems of practical implementation by officers on the street. A number of laws make first offenses punishable by a fine or other non-incarceration penalty, but permit incarceration for subsequent offenses. See, *e.g.*, *Welsh*, 466 U.S. at 746 (first offense is a civil infrac-

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[21] See *Michigan* v. *Summers*, 452 U.S. 692, 702-703 (1981); *Higbee*, 911 F.2d at 380 ("Plaintiffs were not being punished. They were merely being taken to jail to be booked and processed in the customary manner."); *Reichman*, 188 S.W. at 230 (because it serves a distinct law enforcement purpose, arrest for violation of liquor laws permissible even though imprisonment may not be available as punishment); Wilgus, *supra*, at 543 (an arrest "is the apprehension or taking into custody of an alleged offender, in order that he may be brought into the proper court to answer for a crime.") (footnote and quotation marks omitted); W. LaFave, *Arrests: The Decision to Take a Suspect into Custody* 186-189 (1965); 4 W. Blackstone, *Commentaries on the Laws of England* 286-292 (1769); cf. *Ehrlich* v. *Giuliani*, 910 F.2d 1220, 1223 (4th Cir. 1990) ("One of the most important duties of a prosecutor pursuing a criminal proceeding is to ensure that defendants * * * are present at trial."); *Lerwill* v. *Joslin*, 712 F.2d 435, 438 (10th Cir. 1983) (arrest brings the subject before the court and subjects him to its immediate authority, without which "the initiation of a prosecution would be futile").

tion punishable by $200 fine; subsequent offenses punishable by imprisonment of up to one year); *Carroll*, 267 U.S. at 154. A police officer witnessing an offense on the street, however, has no way of knowing whether the perpetrator is a first-time offender. Failure to arrest could leave a repeat offender on the street; arrest could subject the officer to personal liability for damages. "This is a very unsatisfactory line of difference" for police officers to administer. *Carroll*, 267 U.S. at 157.

### D. Legislatures Have Prevented And Can Continue To Prevent Arbitrary Law Enforcement

Adopting a constitutional rule for fine-only misdemeanors is not the only available safeguard against possible abuses. As amicus ACLU demonstrates (Br. 12-15), a number of States have taken steps to limit the authority of police to arrest for misdemeanors or fine offenses. See also Nonresident Violator Compact, Tex. Transp. Code §§ 703.001 - 703.004 (1997); *Berkemer*, 468 U.S. at 437 n.26. Similarly, the United States Park Police, in conjunction with the district courts, have developed a "collateral list" procedure under which officers may issue citations for certain misdemeanor crimes and may either require a subsequent appearance in court or allow the offender to avoid a court appearance by paying a designated fine. The Village of Arlington Heights itself has elected not to arrest for certain ordinance violations. J.A. 23-24.

Such decisions are best made locally in light of the particular policy concerns and needs for law enforcement of individual communities. Once a community has adjudged certain behavior to be criminal, the Fourth Amendment should not require police officers, who have probable cause to believe that an offense has been committed, to adopt the least restrictive or least intrusive means of enforcing the law. See *United States* v. *Sharpe*, 470 U.S. 675, 687 (1985)



("[T]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable.").

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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## APPENDIX

The following state statutes describe the authority of law enforcement officers to effect warrantless arrests.

Ala. Code § 15-10-3(a)(1) (1996) (authorizing warrantless arrest for any "public offense" committed in the presence of the officer); Alaska Stat. § 12.25.030(a)(1) (Michie 1996) (authorizing arrest without a warrant "for a crime committed * * * in the presence of the person making the arrest"); Ariz. Rev. Stat. Ann. § 13-3883 (West 1997) (authorizing arrest without a warrant when a misdemeanor has been committed in the officer's presence); Ark. Code Ann. § 16-81-106(a)(2) (Michie 1997) (authorizing arrest by an officer without a warrant "where a public offense is committed in his presence"); Cal. Penal Code § 836(a)(1) (West Supp. 1998) (authorizing warrantless arrest where "the person arrested has committed a public offense in the officer's presence"); Colo. Rev. Stat. Ann. § 16-3-102(b) (West 1998) (authorizing officer to make warrantless arrest when "[a]ny crime has been or is being committed" in the officer's presence); Conn. Gen. Stat. Ann. § 54-1f(a) (West 1994) (authorizing warrantless arrests for "any offense"); Del. Code Ann. tit. 11, § 1904(a)(1) (1997) (authorizing warrantless arrest for any misdemeanor committed in the officer's presence); D.C. Code Ann. § 23-581(a)(1)(B) (1996) (authorizing warrantless arrest where officer has probable cause to believe a person has committed an offense in the officer's presence); Fla. Stat. Ann. § 321.05(1) (West 1995 & Supp. 1997) (authorizing arrests by officers without a warrant "for the violation of any state law committed in their presence"); Ga. Code § 17-4-20 (1997) (authorizing warrantless arrest by officer "for a crime * * * if the offense is committed in such officer's presence"); Haw. Rev. Stat. Ann. § 803-5(a)

(Michie 1997) (authorizing warrantless arrest "when the officer has probable cause to believe that [a] person has committed any offense"); Idaho Code § 19-603(1) (1997) (authorizing warrantless arrest by officer "for a public offense committed or attempted in his presence"); 725 Ill. Comp. Stat. Ann § 5/107-2(1)(c) (West 1992) (authorizing arrest by officer without a warrant when "[h]e has reasonable grounds to believe that the person is committing or has committed an offense"); Ind. Code Ann. § 35-33-1-1(a)(4) (Burns 1986) (authorizing warrantless arrest when the officer has probable cause to believe a person "is committing or attempting to commit a misdemeanor in the officer's presence"); Iowa Code Ann. § 804.7 (1994) (authorizing warrantless arrest "for a public offense committed or attempted in the peace officer's presence"); Kan. Stat. Ann. § 22-2401 (1996) (authorizing warrantless arrest for "[a]ny crime, except a traffic infraction or a cigarette or tobacco, infraction" committed in the officer's view); Ky. Rev. Stat. Ann. § 431.005(1)(d) (Baldwin 1997) (authorizing warrantless arrest for any offense punishable by confinement committed in the officer's presence); La. Code Crim. Proc. Ann. art. 213(3) (West 1991) (authorizing warrantless arrest where the officer "has reasonable cause to believe that the person arrested has committed an offense"); Me. Rev. Stat. Ann. tit. 15, § 704 (West 1980) (authorizing warrantless arrest of "persons found violating any law of the State or any legal ordinance or bylaw of a town") and Me. Rev. Stat. Ann. tit. 17-A, § 15 (West 1983 & Supp. 1997) (authorizing warrantless arrests for misdemeanors in the officer's presence); Md. Ann. Code art. 27, § 594B(a) (1957) (authorizing officer's warrantless arrest of any person who commits, or attempts to commit, "any felony or misdemeanor" in the presence of the officer); Mass. Gen. Laws Ann. ch. 276, § 28 (West 1990) (warrantless arrest authorized for designated misdemeanor



offenses) and Mass. Ann. Laws ch. 272, § 60 (Law. Co-op. 1994 & Supp. 1997) (authorizing warrantless arrest for littering offenses where identity of arrestee is not known to officer); Mich. Comp. Laws Ann. § 28.6(5) (West 1994) (authorizing warrantless arrests "for all violations of the law" committed in the officer's presence); Mich. Stat. Ann. § 28.874(a) (Law. Co-op 1985 & Supp. 1997) (authorizing warrantless arrests where "[a] felony, misdemeanor, or ordinance violation is committed in the peace officer's presence"); Minn. Stat. Ann. § 629.34 (West 1983) (authorizing warrantless arrest "when a public offense has been committed or attempted in the officer's or constable's presence"); Miss. Code Ann. § 45-3-21(1)(a)(vi) (1991) (authorizing warrantless arrest by Highway Safety Patrol of "any person or persons committing or attempting to commit any misdemeanor, felony or breach of the peace within their presence or view"); Mo. Ann. Stat. § 479.110 (Vernon 1987) (authorizing warrantless arrest of "any person who commits an offense in [the officer's] presence"); Mont. Code Ann. § 46-6-311(1) (1997) (authorizing warrantless arrest if "the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest"); Neb. Rev. Stat. §§ 60-683, 81-2005 (1996) (authorizing warrantless arrest for misdemeanors committed in the officer's presence); Nev. Rev. Stat. § 171.172 (1996) (authorizing warrantless arrest by officer when a person commits "any criminal offense" in the presence of the officer); N.H. Rev. Stat. Ann. § 614:7 (1996) (authorizing warrantless arrest of any person who has committed "any criminal offense" in the presence of the officer); N.J. Stat. Ann. § 53:2-1 (West 1986 & Supp. 1997) (authorizing officers to arrest without a warrant "for violations of the law committed in their presence"); N.M. Stat. Ann. § 66-2-12(A)(2) (Michie 1978 &

1994 Repl.) (authorizing warrantless arrests for motor vehicle code violations committed in the presence of the officer); N.Y. Laws § 140.10 (Consol. 1992 & Supp. 1997) (authorizing warrantless arrest by a police officer for "[a]ny offense" committed in the officer's presence); N.C. Gen. Stat. § 15A-401(b) (1997) (authorizing a warrantless arrest where an officer has probable cause to believe the person has committed "a criminal offense" in the officer's presence"); N.D. Cent. Code § 29-06-15 (1991) (authorizing warrantless arrest "[f]or a public offense, committed or attempted in the officer's presence"); Ohio Rev. Code Ann. § 2935.03 (Baldwin 1997) (authorizing warrantless arrest of a person "found violating * * * a law of this state, an ordinance of a municipal corporation, or a resolution of a township"); Okla. Stat. Ann. tit. 22, § 196 (West 1992) (authorizing warrantless arrests "[f]or a public offense, committed or attempted in [the officer's] presence"); Or. Rev. Stat. § 133.310(1)(i) (1995) (authorizing warrantless arrest upon probable cause for any offense occurring in the officer's presence except traffic infractions and other offenses punishable only by a fine); 71 Pa. Cons. Stat. Ann. § 252(a) (West 1990) (authorizing warrantless arrests by state police "for all violations of the law, including laws regulating the use of the highways, which they may witness"); R.I. Gen. Laws § 12-7-3 (1994) (authorizing warrantless misdemeanor and petty misdemeanor arrests where "the officer has reasonable grounds to believe that [the] person cannot be arrested later or may cause injury to himself or others or loss or damage to property unless immediately arrested"); S.C. Code Ann. § 17-13-30 (Law. Co-op. 1976 & Supp. 1997) (authorizing warrantless arrests of persons who, in the presence of the officer, "violate any of the criminal laws of this State"); S.D. Codified Laws Ann. § 23A-3-2 (Michie 1988 & Supp. 1997) (authorizing warrantless arrest by officer "[f]or a public



offense, other than a petty offense, committed or attempted in his presence"); Tenn. Code Ann. § 40-7-103(1) (1997) (authorizing law enforcement officer to arrest without a warrant "[f]or a public offense committed or a breach of the peace threatened in his presence"); Tex. Crim. Code Ann. art. 14.01 (West 1977) (authorizing officer's arrest of offender without a warrant "for any offense committed in his presence or within his view,"); Utah Code Ann. § 10-3-915 (1996) (authorizing warrantless arrests for "any offense directly prohibited by the laws of this state or by ordinance"); Vt. R. Crim. P. 3(a) (1983 & Supp. 1997) (authorizing warrantless arrests where "a crime" is committed in the presence of the officer); Va. Code Ann. § 19.2-81 (Michie 1995) (authorizing warrantless arrest of "any person who commits any crime in the presence of such officer"); Wash. Rev. Code Ann. § 10.31.100 (West 1990 & Supp. 1997) (authorizing warrantless arrests for misdemeanors committed in the presence of the officer); W. Va. Code § 62-10-9 (1990 & Supp. 1997) (authorizing warrantless arrests "for all violations of any of the criminal laws of the United States, or of this state, when committed in [an officer's] presence"); Wis. Stat. Ann. § 968.07(1)(D) (West 1985) (authorizing warrantless arrest when "[t]here are reasonable grounds to believe that the person is committing or has committed a crime"); Wyo. Stat. Ann. § 7-2-102(b)(1) (Michie 1995 & Supp. 1997) (authorizing warrantless arrest when "any criminal offense" is committed "in the officer's presence").